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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,693	10/20/2004	Andreas Kleineidam	11694/04356	4426

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EXAMINER

DILLON JR, JOSEPH A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/501,693	Applicant(s) KLEINEIDAM ET AL.	
	Examiner Joseph A. Dillon, Jr.	Art Unit 3651	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8,28-55 and 57-67 is/are pending in the application.
- 4a) Of the above claim(s) 48-55 and 57-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8 and 28-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's election without traverse of 2/6/06 is acknowledged.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8, 28-37, 39-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim(s) 8, line(s) 2, "alternately connected to" can be taken as a method step when two structural connections are what is actually meant.

With regard to claim(s) 40, "path or conveyance route" appear to be synonyms. This calls into question the scope of what is being claimed.

Claims 39-47 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a prime mover and structural particulars allowing the elastic member(s) to function as valves.

With regard to claim(s) 42-43, these claim(s) have insufficient structure and too much action for apparatus claim(s); suggesting method claim(s) dependent from apparatus claim(s).

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8, 28, 33-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Vogt (3,260,285).

Vogt (3,260,285) disclose(s):

- A pneumatic conveyance device, Figure(s) 1 & 2, for powdered material;
- said device connected to a reservoir 10 & delivery line(s) 16;
- A chamber 14 comprising a wall having a rigid, hollow, cylindrical element 43 comprising a gas-permeable material forming a filter, column 4, line(s) 60;
- A source of negative pressure 35, 49 & 56;
- A source of pressurized gas 34, 48 & 55;
- A valve 33, 47 & 54 for admitting gas to a radial opening;
- Material entering & exiting the chamber at axial ends;
- A pinching inlet valve 51;
- A pinching outlet valve 19.

The applicant is to note, an intended use clause, "for pneumatic conveyance", "can be", "to force" found in an apparatus claim is not afforded the effect of a distinguishing limitation unless there is associated structure. Otherwise, the applicant is reciting a mere possibility.

Further, a discharging of material inherently cleans the chamber as defined by the applicant's claim language.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8, 28-29, 33-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt (3,260,285) in view of Kai et al. (6,663,325).

With regard to claim(s) 29, 46-47; Vogt (3,260,285) lack(s) an element that is porous & is silent on materials of construction of same.

Kai et al. (6,663,325) teach(es) a sintered, plastic porous element, column 6, first paragraph.

As the applicant has failed to show criticality or unexpected results, a pore size less than 5 micron is considered to be a matter of design choice.

It would have been obvious to modify Vogt (3,260,285) to substitute a sintered, plastic porous element in order to increase efficiency as taught by Kai et al. (6,663,325).

### ***Conclusion***

8. Claims 30-32 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

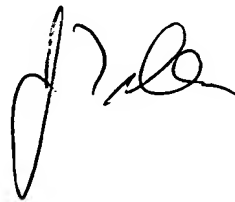
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ogawa (JP 0971325) is particularly relevant.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph A. Dillon, Jr. whose telephone number is

(571)272-6913. The examiner can normally be reached on 8-5:30, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571)272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**JOE DILLON, JR.**  
**PRIMARY PATENT EXAMINER**